

SERVICE DATE – FEBRUARY 25, 2014

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1117X

ST. LAWRENCE & ATLANTIC RAILROAD COMPANY—DISCONTINUANCE OF
SERVICE EXEMPTION—IN CUMBERLAND COUNTY, ME.

Digest:¹ St. Lawrence & Atlantic Railroad Company is permitted to discontinue rail service over approximately 24.23 miles of rail line, owned by the State of Maine, in Cumberland County, Me., subject to the imposition of standard conditions to protect railroad employees.

Decided: February 24, 2014

By petition filed on November 8, 2013, St. Lawrence & Atlantic Railroad Company (SLR) seeks an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to discontinue service over approximately 24.23 miles of rail line owned by the State of Maine located between milepost 1.74 near Deering, Me., and milepost 25.97 at the town line between New Gloucester and Auburn, Me. (the Line). Pursuant to 49 U.S.C. § 10502(b), the Board served and published a notice of the petition in the Federal Register on November 27, 2013 (78 Fed. Reg. 71,037).

B&G Foods North America, Inc. (B&G), the only active shipper on the Line, filed in opposition to the petition on December 17, 2013. SLR filed a reply on December 27, 2013. On January 6, 2014, B&G filed a motion to strike SLR's reply or, in the alternative, a further reply. We will grant the exemption for the reasons set forth below.

BACKGROUND

The Line, over which SLR owns an exclusive perpetual freight easement, is owned by the State of Maine.² SLR, a Class III carrier, maintains that the Line is currently in Federal Railroad

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² SLR states that it sold the assets comprising the Line to the State of Maine in an attempt to reduce SLR's financial burden. See Maine—Acquis. Exemption—Certain Assets of St. Lawrence & Atl. R.R., FD 35018 (STB Served Sept. 13, 2007); Maine—Pet. for Declaratory Order, FD 35440 (STB Served Dec. 29, 2010).

Administration Class 2 condition. The Line is stub-ended and thus not capable of handling overhead traffic.

According to SLR, in the late 1990s and early 2000s, there were three active shippers on the Line shipping a total of more than 500 carloads per year. By late 2006, however, two of those shippers had closed or moved their operations, leaving B&G's Burnham & Morrill Company (B&M) baked beans plant in Portland, Me., as the only remaining shipper on the Line. The B&M plant is located near the end of the Line at milepost 2.4. B&M has been producing baked beans at the plant since the 1920s.

PRELIMINARY MATTER

As noted above, B&G filed a motion to strike SLR's reply or, alternatively, a further reply to SLR's reply. SLR's filing constitutes a reply to a reply and is not permitted under our rules nor is it needed to complete the record. See 49 C.F.R. § 1104.13(c). Therefore, we will grant B&G's motion to strike.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail carrier may not discontinue operations without the Board's prior approval. Under 49 U.S.C. § 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

According to B&G, B&M currently receives deliveries of nearly all of its small pea beans—the variety used to make B&M's traditional oven-baked beans—by rail from the midwestern United States and Manitoba, Can. These inbound rail shipments of pea beans amount to several million pounds per year (approximately 30 cars per year). Figures submitted by B&G show that 93 percent of the small pea beans received at the B&M plant in 2012 and 2013 were shipped by rail, the remaining seven percent by truck. B&M ships all of its outbound product by truck. It also receives inbound shipments of certain varieties of beans, such as kidney and pinto beans, by truck. According to B&G, shifting the rail-shipped beans to truck would result in a six-figure annual increase in the plant's transportation costs.³

³ In their submissions, the parties designated certain information, including carload, cost, and rate data, as highly confidential. Although the Board reserves the right to disclose such information in decisions when necessary, in this case we have presented our decision without doing so to the extent possible, by describing certain figures only in general terms.

In its petition, SLR (1) provides an estimate of the annual number of rail carloads shipped in the base year and forecast year,⁴ (2) claims an annual base year crew cost of \$12,556 and (3) urges the Board to accept an average maintenance-of-way cost of \$6,500 per mile of line per year.⁵ SLR's revenue per car figure is uncontested, as is SLR's annual crew cost figure of at least \$12,556 per year. However, B&G disputes SLR's annual carload estimate, claiming a significantly higher number of carloads in the forecast year. B&G also challenges SLR's annual maintenance-of-way cost estimate, asserting that it is unreasonable and should be reduced by half in light of an assumed continued availability of the short line railroad tax credit.

Even accepting the record evidence most favorable to B&G—that is, using B&G's maximum estimated number of annual carloads on the Line (approximately 30)⁶ and reducing by half SLR's estimated maintenance-of-way cost—the evidence shows that SLR would still operate at a net loss well into five figures in the forecast year.

Based on the foregoing, we find that under § 10502(a)(1), detailed scrutiny of the proposed discontinuance under 49 U.S.C. § 10903 is not necessary to carry out the rail transportation policy in this case. Even using the data relied on by and most favorable to B&G, the record demonstrates that continued operation of the line would require SLR to operate at a substantial net annual loss. By minimizing the administrative expense of the application process, an exemption would reduce regulatory barriers to exit. 49 U.S.C. § 10101(7). An exemption would also foster sound economic conditions and encourage efficient management by permitting SLR to discontinue operations as quickly as possible and curtail its operating losses. *Id.* §§ 10101(5) and (9). Other aspects of the rail transportation policy will not be adversely affected by the use of the exemption process.

Additionally, the record shows that, pursuant to § 10502(a)(2)(B), regulation of the proposed discontinuance under § 10903 is not necessary to protect shippers from an abuse of market power. B&G today uses truck transportation for about seven percent of its inbound pea

⁴ SLR's base year is June 1, 2012 through May 31, 2013; its forecast year is June 1, 2013 through May 31, 2014.

⁵ For its annual maintenance-of-way cost estimate, SLR relies on Burlington Northern Railroad—Abandonment—in Crawford & Labette Counties, Kansas, AB 6 (Sub-No. 300), slip op. at 7 (ICC served Feb. 9, 1989), where the Board accepted \$6,418 per track mile as a reasonable annual maintenance-of-way cost. The Board has allowed these types of estimates for maintenance-of-way costs in the past from Class III carriers. *See, e.g., Miss. & Skuna Valley R.R.—Aban. Exemption—in Yalobusha & Calhoun Cntys., Miss.*, AB 1089X, slip op. at 2 n.5 (STB served Jan. 20, 2012) (accepting a \$6,000 estimate).

⁶ As noted above, the annual carloads on the line have fallen significantly from the more than 500 carloads SLR indicates were shipped in the early 2000s.

beans (in situations where beans are not available by rail) and implicitly acknowledges that the pea beans currently received by rail could be trucked to the plant, albeit at additional costs. The Board recognizes the additional transportation cost that could result from shifting all of B&M's inbound pea bean shipments to truck. At the same time, the record shows that requiring SLR to continue operating would not only impose additional costs on the carrier, but would also require it to operate at a substantial net loss. For purposes of this decision, the Board has accepted B&G's argument regarding maintenance expenses and reduced SLR's estimate by half. But we note that SLR's maintenance expenses would have to be considerably lower still for SLR to avoid a loss, given the number of annual carloads (approximately 30) shipped by B&M. B&G has not shown that the additional costs it would incur, though not insubstantial, would jeopardize B&M's ability to carry on its business. Although the Board recognizes that B&G is likely to suffer some harm and added expense, that by itself is insufficient to outweigh the detriment to the public interest caused by continued operation of uneconomic facilities, especially where transportation alternatives are available. See Norfolk S. Ry.—Discontinuance of Service Exemption—in Stanly Cnty., N.C., AB 290 (Sub-No. 254X) et al., slip op. at 7-8 (STB served Aug. 11, 2006) (citing Chi. & N.W. Transp. Co.—Aban., 354 I.C.C. 1, 7 (1977)). Here, continued service would require SLR to operate at a net loss. Further, because SLR is seeking only discontinuance, not abandonment, the Line will remain part of the national rail transportation system within our jurisdiction and available for restored rail service in the future if economic circumstances warrant.

Because we find that continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101 or to protect shippers from the abuse of market power,⁷ we will grant the discontinuance exemption.

Labor Protection: Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose on SLR the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

Other Issues: Because SLR seeks an exemption only to discontinue service over the Line and not to abandon it, the Board need not consider offers of financial assistance (OFAs) under 49 U.S.C. § 10904 to acquire the Line for continued rail service, trail use requests under 16 U.S.C. § 1247(d), or requests to negotiate for public use of the Line under 49 U.S.C. § 10905. Moreover, environmental reporting requirements under 49 C.F.R. § 1105.6(c) and historic reporting requirements under 49 C.F.R. § 1105.8(b) do not apply. However, the OFA provisions

⁷ Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

under 49 U.S.C. § 10904 for a subsidy to provide continued rail service do apply to discontinuances.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. § 10502, we exempt from the prior approval requirements of 49 U.S.C. § 10903 the discontinuance of service by SLR of its operations over the above-described line, subject to the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

2. An OFA under 49 C.F.R. § 1152.27(b)(2) to subsidize continued rail service must be received by the railroad and the Board by March 7, 2014, subject to time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,600. See 49 C.F.R. § 1002.2(f)(25).

3. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

4. Petitions to stay must be filed by March 7, 2014. Petitions to reopen must be filed by March 17, 2014.

5. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective on March 27, 2014.

6. B&G’s motion to strike is granted.

By the Board, Chairman Elliott and Vice Chairman Begeman.